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APR 18 2005

OFFICE OF PETITIONS

In re Patent No. 6,838,552 :
Mitchell et al. :
Issue Date: January 4, 2005 : DECISION ON
Application No. 09/709,201 : REQUEST FOR RECONSIDERATION
Filed: November 8, 2000 : OF PATENT TERM ADJUSTMENT
Atty Docket No. 50150/007002 :
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed December 27, 2004. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected to one hundred forty-five (145) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

Patentees are given two (2) months from the mail date of this decision to respond. Extensions of time under § 1.136(a) are not permitted.

On January 4, 2005, the application matured into U.S. Patent No. 6,838,552, with a revised patent term adjustment of 32 days. Prior to issuance, on December 27, 2004, patentees filed the instant request, which is properly treated as a request for reconsideration of patent term adjustment. Patentees stated that the correct patent term adjustment is 145 days. Patentees requested the correction on the basis that the Office failed to issue a patent within "four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding

requirements were satisfied." Patentees stated that the issue fee was paid and all outstanding requirements were satisfied on April 12, 2004. Patentees further stated that as the issue date for the patent shown in PAIR is January 4, 2005, the period of delay exceeding the 4-month time limit for patent issuance is 145 days.

The Office initially determined a patent term adjustment of zero (0) days based on periods of adjustment totaling 282 days for Office delay reduced by periods totaling 395 days for applicant delay. Patentees did not file an application for patent term adjustment pursuant to § 1.705(b) prior to payment of the issue fee on April 12, 2004.

After the mailing of the notice of allowance, the requested period of adjustment of 145 days, pursuant to § 1.702(a)(4), was entered for Office delay in issuing the patent. However, with this entry, the revised patent term adjustment equals thirty-two (32) days $((282 + 145 \text{ days for Office delay}) - (395 \text{ days for applicant delay}))$, not 145 days.

In view thereof, it is concluded that the revised patent term adjustment indicated in the patent of thirty-two (32) days is correct.

The Office acknowledges submission of \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to Files Repository for storage as a patented file.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin A. Ferriter
for

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